IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

W.P. No.15240 of 2004 and C.C.Nos.1153 & 1390 of 2004

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WRIT PETITION No: 15240 of 2004

Between:

Sri Shirdi Sai Samaj,

Regd.No.2811/1996,
Sri Shirdi Sai Baba Temple,

Bhagyanagar Colony,

Kukatapally, Hyderabad,

Rep by its Secretary Sri V.Hariprasada Rao.

..... PETITIONER

AND

1. The Kukatpally Municipality,

Moosapet, Hyderabad, rep. By its

Commissioner.

2 The Commissioner of police,

Cyberabad Commissionerate, RR District,
Lakdi-ka-pool, Hyderabad.

3 The S.H.O., Kakutpally Police Station,

Kukatpally, Hyderabad.

4. Forum for Peoples Thought,

rep. By its President V. Gopala Rao

s/o Lakshminarayana, 69 years,

r/o Flat No.5, 'C' Block,

Swagruha Apartments, Bhagyanagar Colony,

Kukatpally, Hyderabad.

(4th respondent is impleaded as per the court orders dt.3.11.2004 in

WPMP 20123 of 2004 in W.P. 15240 of 2004)

.....RESPONDENS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction one in the nature of Mandamus declaring the highhanded action of the respondents in interfering with the peaceful possession, enjoyment and rituals being performed in Sri Shirdi Sai baba Statue temple to the extent of 200 sq.yds and Dwarakamai to the extent of 100 sq. yds., of the petitioner situated at Bhagyanagar colony, Kukatpally, Hyderabad as arbitrary, illegal, unjust and violative of the fundamental rights guaranteed to the petitioner under Articles 19, 25 and 26 of part III of the constitution of India, apart from contrary to the

order of this Hon'ble court dated 11-9-2003 made in W.A.Nos.746, 748 and 848 of 2003 and the order dated 23-3-2004 made in C.C.No.266/2004 and consequently direct the respondents not to demolish Sri Shirdi Sai Baba Statue Temple to the extent of 200 sq.yds and Dwarakamai to the extent of 100 sq.yds., of the petitioner situated at Bhagyanagar Colony, Kukatpally, Hyderabad.

Counsel for the Petitioner: MR.C.V.MOHAN REDDY

Counsel for the Respondent No.1: MR.R.TIMMA REDDY (Standing Counsel for Municipaliites, T.A.)

Counsel for the Respondents 2 and 3: The G.P. for Home.

Counsel for the Respondent No.4: Mr.Ravi Shankar Janokyala.

CONTEMPT CASE NO : 1153 of 2004

(Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 11.9.2003 in W.A. No.748 of 2003.)

Between:

Forum for People thought,

Rep. by its Secretary Sri V. Gopala Rao,
Flat No.5, Swagruha Apartments,

Plot No.135, Block -C,
Bhagyanagar Colony, Kukatpally,

Balanagar (M), R.R.Dist.

..... PETITIONER

AND

1 Sri Shirdi Sai Samaj, Rep. by its Secretary

V. Hari Prasada Rao,

Sri Shiridi Sai Baba Temple,

Bhagyanagar Colony,
Kukatpally, Hyderabad.

2 Bhagyanagar Residence WElfare Assn.,

Regd.No.1480/94, Bhagyanagar Colony,

Kukatpally, Balanagar (M),

Ranga Reddy Dist.

Rep. by Sri M.V. Kishore.

3 Bhagyanagar Colony Development Assn.,

Regd.No.3984/96,

Rep. by Sri L. Satyanarayana Setty,

Bhagyanagar Colony,
Kukatpally, Balanagar (M).

4 Bhagyanagar Colony Consumer Association,

Regd.No.5334/94,

Rep. by its President S.V. Ratnam and

Secretary L.Laxmanrao.

5 Bhagyanagar Mahila,

Regd.No.2656/95,

Rep. by its President D.V. Saraswati and

Secretary M. Jagadamba.

6 The District Collector,
Ranga Reddy District, Khairtabad,
Hyderabad.

7 Sri Vandan Kumar,

Muncipal Commissioner,

Kukatpally Municipality,

Rangareddy District.

8. The Mandal Reveenue Officer,

Balanagar Mandal, Rangareddy District.

9. Hyderabad Urban Development Authority,

Rep. by its Vice Chairman,

Paigah Plaza, Begumpet,

Hyderabad.

10. The Government of A.P.,

Rep. By its Principal Secretary,

Municipal Administration Department,

Secretariat, Hyderabad.

(Respondents No.1 to 6 and 8 to 10 are not necessary parties to this contempt case.)

.....RESPONDENTS

Counsel for the Petitioner: MR.RAVI SHANKAR JANDHYALA

Counsel for the Respondent No.7: MR.R. THIMMA REDDY

A N D

CONTEMPT CASE NO : 1390 of 2004

(Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 11.9.2003 W.A. Nos.748 and 848 of 2003.)

Between:

1. Bagyanagar Residence Welfare Association,

   Regd. No.1480/94,

   Bhagyanagar Colony, Kukatpally,

   Balanagar Mandal,

   Ranga Reddy District,

   rep. By its President Mr.M.V.Kishore.

2. Bagyanagar Colony Consumer Association,

   Reg. No.5334 of 1994,

   Bhagyanagar Colony, Kukatpally,

   Balanagar Mandal,

   Ranga Reddy Distraict,

   Rep.by Sri K. Lakshman Rao,

3 Bagyanagar Mahila,

   Regd.2656/95,

   Bhagyanagar Colony,

   Kukatpally, Balanagar Mandal,

   Ranga Reddy Distraict,

   Rep.by its Secretary M.Jagadamba.

4. Sri Shirdi Sai Samaj,

   Sri Shirdi Saibaba Temple,

   Bagyanagar Colony,

Kukatpally, Hyderabad,

Rep.by Sri V. Hari Prasad Rao,

..... PETITIONERS

AND

Mr. L. Vandan Kumar,

Municipal Commissioner,
Kukatpally Municipality,

Ranga Reddy District.

.....RESPONDENT

Counsel for the Petitioners: MR.C.V.MOHAN REDDY
Counsel for the Respondent : MR. R. THIMMA REDDY

The Court made the following :

The Hon'ble Sri Justice B. Sudershan Reddy

a n d

The Hon'ble Sri Justice K.C. Bhanu

W.P. No. 15240 of 2004
and
CONTEMPT CASE Nos. 1153 and 1390 OF 2004

COMMON ORDER: **(per Sri Justice K.C. Bhanu)**

The point involved in the contempt cases and the writ petition relates to 300 Sq. yards covered by Dwarakamai Mandir situated in S.No. 168 in Bhagyanar Cooperative Housing Society

Limited, Kukatpally of Rangareddy District. Originally the Bhagyanagar Colony Welfare Association represented by its Secretary filed W.P.No.5902 of 2003 and W.P. 1354 of 1998 before this court. W.P. 5902 of 2003 was filed for issuance of writ of Mandamus directing the respondents to remove all the constructions made in the area earmarked for park situated in S.No. 168 of Bhagyanagar Cooperative Housing Society besides declaring the proceedings in LP1/6358/2002 dated 5.3.2003 issued by the Collector, Rangareddy District as illegal and *ultra vires*. The second writ petition i.e. W.P. 1354 of 1998 was filed for issuance of writ of Mandamus directing the respondents to protect the park area of 2578 Sq. yards situated in S.Nos. 162, 163, 165 and 167 to 170. Both these writ petitions were disposed of by a common order dated 24.4.2003 by a learned single Judge of this court with the following observations:

> "(i) Notwithstanding any order passed by any Civil Court and the Government of Andhra Pradesh or District Collector, the Kukatpally Municipality shall immediately take action for demolishing and dismantling all structures, which have come up in the open area admeasuring 2897 Sq. yards in the lay out approved by the Hyderabad Urban Development Authority, whatever be the amount spent on such structures, forthwith. The Municipality may take police help if necessary. It is made clear that all the Associations espousing the cause and public interest of the residents are before this court and no further notice is necessary to anybody;
>
> (ii) The actual area occupied by Shirdi Sai Baba temple shall be excluded and other structures, be it, temporary or permanent, shall also be dismantled and removed forthwith. The area of about 2,597 sq. yards after excluding 300 sq. yards occupied by the temple shall be developed as a park and compliance report shall be filed in this Court, within a period of three months by the learned standing counsel for the Municipality;

(iii) It is not denied that an amount of Rs.5,00,000/- has already been sanctioned. Further, the learned counsel for Bagyanagar Colony Welfare Association, Sri V.S.R. Anjaneyulu, submits that the members of the Association will be depositing an amount of Rs.50,000/- with the Municipality within a period of one month from the date of the receipt of a copy of this order, and the same is recorded;

(iv) The Municipality shall commence the work of park forthwith without waiting for the petitioner to deposit the amount of Rs.50,000/-; and

(v) As and when the Municipality requests, the Superintendent of Police shall send a contingent of police for removing the illegal constructions".

Sri Shirdi Sai Samaj, represented by its Secretary V. Hariprasada Rao filed W.A.Nos. 746 and 748 of 2003 against the common order dated 24.4.2003 in W.P.Nos. 5902 of 2003 and 1354 of 1998 and the said writ appeals were dismissed. Against the order of the Division Bench dated 11.9.2003 in W.A. 746 of 2003, Sri Shirdi Sai Samaz filed Special Leave Petition before the Supreme Court and the Supreme Court by its order dated 6.10.2003 dismissed the Special Leave Petition. Thereafter, Sri Shirdi Sai Samaz also filed a review petition before the Supreme Court in Review Petition (Civil) No. 1662 of 2003 in Special Leave Petition (Civil) No. 18908 of 2003. The said review petition was also dismissed by the apex Court. Thus the orders of the learned single Judge attained finality.

Thereafter C.C. 266 of 2004 was filed on the ground that the respondents wilfully disobeyed the orders of this court dated 11.9.2003 made in W.A.748 of 2003. The Kukatpally Municipality filed an affidavit stating that all the structures, shops, sheds, residential huts have been demolished retaining an extent of 300 Sq. yards by the Municipality as per the directions of this court and therefore there

is no violation on the part of the Municipality. Accordingly the contempt case is dismissed granting leave and liberty to the petitioner to approach the court for appropriate relief in case the directions of this court are not complied with. Therefore the petitioner-respondent No.5 filed the present contempt case—C.C.1153 of 2004 for wilful disobedience of the implementation of the orders dated 11.9.2003 made in W.A. 748 of 2003.

Whereas, C.C. 1309 of 2004 is filed by Bagyanagar Residence Welfare Association, Bagyanagar Colony Consumer Association, Bagyanagar Mahila and Sri Shirdi Sai Samaj for deliberate violation of the orders of this court made in W.A.Nos. 746, 748 and 848 of 2003.

The present writ petition – W.P.15240 of 2004 is filed by Sri Shirdi Sai Samaz for issuance of a writ of Mandamus declaring the high-handed action of the respondents in interfering with the peaceful possession, enjoyment and rituals being performed in Sri Shirdi Sai Baba Statute temple to the extent of 200 Sq. yards and Dwarakamai to the extent of 100 Sq. yards of the petitioner situated at Bhagyanagar Colony, Kukatpally, Hyderabad.

Learned counsel Sri C.V. Mohan Reddy, appearing for the petitioner in the writ petition contended that as per the orders of this court the 1st respondent demolished all structures, permanent and temporary, leaving Dwarakamai admeasuring 100 Sq. yards and Shirdi Sai Baba Statute temple admeasuring 200 Sq. yards and the respondents sought police protection to demolish Sai Baba Statute temple to an extent of 200 Sq. yards. He further contended that two temples are located in two different places and this can be borne out from the plan filed by the Kukatpally Municipality in the writ petition. The petitioner-Samaj was in occupation of only 300 Sq. yards i.e. 100 Sq. yards of Dwarakamai temple and 200 Sq. yards of Shirdi Sai Baba temple and they form integral part of each other and one does not exist without the other temple. Hence, he requests this court to

give a direction to the respondents not to demolish the existing temples.

Sri Thimma Reddy, learned counsel for the respondent No.1 – Municipality contended that 300 Sq. yards of land is covered by Shirdi Sai Baba temple and as per the plan the area covered by Dwarakamai temple is situated in 300 Sq. yards and as per the orders of this court the actual area occupied by Shirdi Sai Baba temple shall be excluded from demolition and the total area of about 2597 Sq. yards after excluding 300 Sq. yards occupied by the temple shall be developed as a park. He further contended that the Municipality already removed all the unauthorized structures that came up in the park area on 3.11.2003 and 12.11.2003 and the Municipality proposed to remove all the structures leaving 300 Sq. yards as per the orders of this court and therefore the Municipality has not committed any willful disobedience of the orders of this court and hence the Municipality has not committed any contempt.

On the other hand, Sri Ravisankar Jandyala, learned counsel appearing for Bagyanagar Welfare Association, contended that the Municipality committed contempt of this court since the temporary structures on the western side of the park have not been demolished and therefore the Municipality committed wilful disobedience of the orders of this court. According to him, Sri Shirdi Sai Baba temple is covered by 300 Sq. yards. Hence, he prays to punish the respondents.

For the first time in this writ petition the Shirdi Sai Samaj is asserting that Dwarakamai temple is in existence in an extent of 100 Sq. yards and Shirdi Sai Baba Statute temple is in existence in 200 Sq. yards. The said plea appears to have been invented after filing of writ appeals. The contention of the learned counsel for the petitioner Sri C.V. Mohan Reddy cannot be accepted that the two temples are located in two different areas. From the beginning from the material on record it is clear that there is only one temple constructed in an area of 300 Sq. yards. To substantiate our view that the temple was

constructed in one place, few relevant admissions made by the parties in various proceedings have to be looked into.

Sri Shirdi Sai Samaj filed a suit in the year 1997 in O.S. No. 626 of 1997 on the file of Principal Junior Civil Judge, West and North, Rangareddy. The schedule of the property is shown as "*all that the land admeasuring 1632 Sq. yards or 1364.38 Sqm. of S.No. 168, on which Shirdi Sai Baba Temple was constructed in Bhagyanagar Coop. Housing Society, Phase-I, situated at Kukatpally, Rangareddy District and bounded by: North: 30' wide road; South: Land belonging to the Bhagyanagar Coop. Housing Society; East: 40' wide road and West: Plot No.126 and part of Plot No.135*". This schedule of property indicates that only one temple exists as on the date of filing of the writ petition. The said suit was dismissed for default. The counter affidavit filed by 5th respondent in W.A.M.P. 1359 of 2003 goes to show that the Sai Baba Statute temple was constructed unauthorisedly in the year 1995-96 in 300 Sq. yards. The Shirdi Sai Samaj, who is the writ petitioner herein, filed W.A. 748 of 2003 wherein it is stated that Bhagyanagar Cooperative Society allotted 1632 Sq. yards and the possession was delivered for construction of the Shirdi Sai Baba temple. Nowhere in the writ appeal it is stated about the existence of two different temples at two different areas. A plea has been taken that the learned Judge ought to have seen that the area is occupied by the Dwarakamai temple and an idol of Lord Shirdi Sai Baba and Lord Ganesh idol are installed in the said premises. In the grounds of appeal in W.A. 746 of 2003 the Shirdi Sai Samaj also taken the ground "the learned Judge having excluded 300 Sq. yards covered by Dwarakamai Mandir ought to have allowed the remaining land wherein the pillars were raised up to roof level for the main temple and for the plantation and greenery already in existence".

So, from the pleadings it is clear that Shirdi Sai Baba Statute temple is in existence in an extent of 300 Sq. yards only at one place and not in two different places as claimed by Shirdi Sai Samaj. As a matter of fact, the Shirdi Sai Samaj filed WAMP 298 of 2004 in W.A. Nos. 746, 748 and 848 of 2003 to exclude an extent of

300 Sq. yards for the temple to the effect that an extent of 100 Sq. yards occupied by Dwarakamai temple and 200 Sq. yards occupied by the main temple. The said clarification petition was dismissed holding that the order passed by the court on 11.9.2003 is very clear and unambiguous. That order became final. Therefore, the present writ petition is devoid of merit inasmuch as the petitioner has already availed the remedy and now the petitioner cannot turn round and say that the respondents are interfering with the two temples located at two different areas. The order of the learned single Judge is very clear that the area of 300 Sq. yards occupied by the Shirdi Sai Baba Statute temple shall only be excluded from demolition. The order of this court is very clear that an extent of 300 Sq. yards is occupied by Shirdi Sai Baba temple.

The writ petition is devoid of merit and is liable to be dismissed. Accordingly the writ petition is dismissed.

With regard to C.C. No. 1153 of 2004, in the counter affidavit filed by the Municipal Commissioner it is stated that the land covered by Shirdi Sai Baba temple is cleared and already developed into Park and the Dwarakamai temple authorities will be permitted to occupy only 300 Sq. yards and they will not be allowed to occupy more than the said 300 Sq. yards and that with the police help the respondents were removing the structure at Sai Baba Temple but there was some public resistance and therefore some pillars were removed. Therefore, we do not find any willful disobedience of the directions of this court by the Municipal Commissioner. Structures of a larger extent were removed and developed into park. The Municipality is also taking all possible steps so that there should not be any encroachment over and above 300 Sq. yards by Shirdi Sai Samaj. We have perused the records produced by the Municipality where under various steps have been taken in addressing several letters to the authorities concerned to implement the orders of this court. There was no inaction on the part of the Municipality in not implanting the orders of this court. Therefore, C.C. 1153 of 2004 is liable to be closed and it is accordingly closed.

In view of what is stated above, C.C. 1390 of 2004 is also liable to be dismissed. It is stated that the Transformer which is in existence in the park is not removed. It is brought to the notice of this court that even for removal of Transformer the Municipality is taking steps. Therefore, there is no willful disobedience of the directions of this court. Hence the contempt case is devoid of merit and it is accordingly dismissed.

In the result, the writ petition and the contempt cases are dismissed. No order as to costs.

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B. Sudershan Reddy, J.

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K.C. Bhanu, J.

Date: 03 --11—2004.

MVB.

To

1. **The Kukatpally Municipality,**

   Moosapet, Hyderabad.

2 **The Commissioner of police,**

   Cyberabad Commissionerate, RR District,
   Lakdi-ka-pool, Hyderabad.

3 **The S.H.O.,**

   Kakutpally Police Station,

Kukatpally, Hyderabad.

4. **Mr. L. Vandan Kumar,**
Kukatpally Municipality R.R.Dist.

5. **The District Collector, Khairatabad,**
Hyderabad.

6. **The Mandal Revenue Officer,**
Balanagar (M), R.R.District.

7. **The Vice Chairman, Hyderabad**
Urban Development Authority,
Paigh Plaza, Begumpet.

8. **The Principal Secretary,**
Government of A.P.,
Municipal Administration Department,
Secretariat, Hyderabad.

9. **The Sri Shirdi Sai Samaj,**
Sri Shiridi Saibaba Temple,
Bhagyanagar Colony,
Kukatpally, Hyderabad.

10. **The Bagyanagar Residency Welfare**
Association, Bhagyanagar Colony,
Kukatpally, Balanagar (M), R.R.District.

11. **The Bagyanagar Colony**

Consumers Association,

Bhagyanagar Colony, R.R.District.

12 Two C.D.Copies.